

**IN THE HIGH COURT OF PUNJAB & HARYANA  
AT CHANDIGARH**

**113**

(Through Video Conferencing)

**CRR-1108-2021 (O&M)**

**Date of decision: 29.09.2021**

Baby

.....Petitioner

Versus

State of Haryana and others

.....Respondents

**CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL**

Present : Mr. Ranbir Singh, Advocate for the petitioner.

\*\*\*\*

**MANJARI NEHRU KAUL, J. (ORAL)**

The petitioner is impugning order dated 29.07.2021 passed by learned Additional Sessions Judge-cum-Exclusive Court for Fast Tracking of Cases of Heinous Crime against Women, Karnal, whereby her application filed under Section 319 of the Cr.P.C. for summoning of respondents No.2 to 4 to face trial was dismissed.

Learned counsel for the petitioner inter alia contends that on 28.01.2019 at the instance of the petitioner, FIR No.72 was registered at Police Station Gharaunda, Karnal under Sections 363, 365 and 366-A of the IPC with respect to the alleged occurrence dated 27.01.2019 wherein her minor daughter aged 15 years had been kidnapped forcibly by the accused including the private respondents. Learned counsel has submitted that during investigation, the investigating agency found the private respondents innocent and placed them in column No.2 and presented challan only qua accused Ravi. However, when the petitioner as well as her daughter i.e. victim stepped into the witness box as PW-4 and PW-5 respectively, they levelled

specific allegations against the private respondents qua their role in the alleged crime. In support of his submissions, learned counsel has invited the attention of this Court to Annexures P-2 and P-3 which are copies of deposition of both the petitioner as well as the victim before the trial Court. Learned counsel has contended that it was in the wake of the deposition of both these material witnesses, the application under Section 319 of the Cr.P.C. was moved for summoning the private respondents as accused, however, it was erroneously dismissed by the learned trial Court without appreciating the evidence that had come to the fore during trial. It has been submitted that all the accused including the private respondents were influential persons and had been harassing both the petitioner as well as her minor daughter i.e. victim since the year 2017 qua which she had also made a complaint to the Chief Minister, Haryana (Annexure P-5) dated 13.06.2017.

Learned counsel for the petitioner has further submitted that the trial Court erred in minutely scrutinizing the evidence on record at the stage of summoning of accused under Section 319 of the Cr.P.C. rather it should have just appreciated that the deposition of both the petitioner-complainant as well as the victim revealed that a prima facie case was made out against the private respondents for which they should have been summoned to face trial.

I have heard learned counsel for the petitioner as well as perused the impugned order and the FIR along with other relevant material annexed with the petition.

Before proceeding further it would be appropriate to observe that the power under Section 319 of the Cr.P.C. being a

discretionary one, has to be exercised judicially after giving due regard to the facts and circumstances of the case coupled with the evidence on record which may have been led during the trial. It goes without saying that this power under Section 319 of the Cr.P.C. should in the circumstances be exercised sparingly only if the prima facie involvement of the accused comes to light.

Adverting to the case in hand, in the FIR (Annexure P-1), which was registered on 28.01.2019 by the petitioner-complainant, she had alleged that her daughter had been kidnapped by some unknown persons who had thereafter fled under the cover of darkness. In her statement recorded at the time of registration of the FIR she had not raised any suspicion qua the involvement of any of the private respondents. It was only after stepping into the witness box for the first time both the petitioner-complainant and the victim named them and levelled allegations against the private respondents by alleging that co-accused Ravi was accompanied by them when the alleged occurrence on 28.01.2019 took place.

It would be relevant to notice here that while getting her statement recorded under Section 164 of the Cr.P.C. though the victim stated that she had been kidnapped by some unknown persons, however, she had only given the name of accused Ravi, who has been sent up for trial. It would also be relevant to mention that in her statement recorded before the Legal Aid Counsellor, the victim had stated that on the fateful day i.e. 28.01.2019 at 06:30 P.M. she of her own accord had accompanied accused Ravi to Ludhiana and married him there as she had been acquainted with him for the preceding four

months and had developed a liking for him. She had also stated therein that after solemnizing marriage with accused Ravi she had travelled to Bombay with him and stayed in a rented accommodation, however, on 08.02.2019, she had been brought back from Bombay by the police. Rather in her statement recorded before the Legal Aid Counsellor she had not levelled any allegations against accused Ravi and had in fact stated that she did not want to take any action against him. Learned counsel for the petitioner laid a great deal of stress to hammer forth his submissions qua a complaint (Annexure P-5) made to the Chief Minister dated 13.06.2017 wherein she had alleged that all the accused including the private respondents had come to her house and tried to molest her daughter. Besides learned counsel also submitted that they had also assaulted and threatened the complainant with dire consequences. However, this Court finds it rather strange as to why the petitioner did not name the private respondents in her complaint made to the police on 28.01.2019 at the time of registration of the FIR in case she already knew their names much less raise a suspicion qua their involvement in the crime in question. It needs to be noticed that even in her statement under Section 164 of the Cr.P.C., the victim only stated that she had been kidnapped by unknown persons. It yet again raises a big question mark as to what prevented the victim from naming the private respondents in her statement under Section 164 of the Cr.P.C. if they were already known to both her and her mother i.e. the petitioner in the wake of a complaint (Annexure P-5) dated 13.06.2017 having been made by the complainant against all the private respondents.

As a sequel to the above, this Court does not find any

illegality much less perversity in the order dated 29.07.2021 which has been impugned herein. Before concluding, it would not be out of context to observe that unless there is a reasonable likelihood of the case against an accused being sought to be summoned, ending in a conviction for the offences alleged, a Court should desist from summoning them under Section 319 of the Cr.P.C.

Dismissed.

**29.09.2021**

Vinay

**(MANJARI NEHRU KAUL)**  
**JUDGE**

Whether speaking/reasoned : Yes/No  
Whether reportable : Yes/No